



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-893]

Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results, Partial Rescission, Extension of Time Limits for the Final Results, and Intent to Revoke, in Part, of the Sixth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp ("shrimp") from the People's Republic of China ("PRC"), covering the period of review ("POR") of February 1, 2010, through January 31, 2011. As discussed below, the Department preliminarily determines that the respondents in this review did not make sales in the United States at prices below normal value ("NV") during the POR.

EFFECTIVE DATE: [Insert date published in the Federal Register.]

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SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from the Ad Hoc Shrimp Trade Action Committee ("Petitioners"), the American Shrimp Processors Association ("Domestic

Processors”), Zhanjiang Regal Integrated Marine Resources Co., Ltd. (“Regal”), and Hilltop¹ in accordance with 19 CFR 351.213(b), during the anniversary month of February, for administrative reviews of the antidumping duty order on shrimp from the PRC. The request for review submitted by Hilltop also included a request for company-specific revocation, pursuant to 19 CFR 351.222(b)(2).² On March 31, 2011, the Department initiated an administrative review of 84 producers/exporters of subject merchandise from the PRC.³ On July 11, 2011, the Department received a submission from Domestic Processors requesting that the Department verify the factual information submitted by Hilltop, pursuant to 19 CFR 351.307(b)(v)(A).⁴

On March 29, 2011, the Department received a “no shipment certification”⁵ from Shantou Yuexing Enterprise Company. In its certification, Shantou Yuexing Enterprise Company also requested that the Department rescind the review with respect to Shantou Yuexing Enterprise Company, pursuant to 19 CFR 351.213(d)(3).⁶

Respondent Selection

On May 9, 2011, in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (“Act”), the Department selected Hilltop and Regal for individual examination in this review, since they were the largest exporters by volume during the POR, based on U.S. Customs and Border Protection (“CBP”) data of U.S. imports.⁷

¹ Hilltop International, Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., Ocean Duke Corporation and Kingston Foods Corporation (collectively, “Hilltop”).

² See Letter from Hilltop regarding Request for Administrative Review and Company-Specific Revocation dated February 28, 2011 (“Revocation Request”).

³ See Initiation of Antidumping Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Review, 76 FR 17825 (March 31, 2011) (“Initiation”).

⁴ See Letter from Domestic Processors regarding Verification Request for Hilltop International dated July 11, 2011.

⁵ Companies have the opportunity to submit statements certifying that they did not enter, export or sell subject merchandise to the United States during the POR.

⁶ See Letter from Shantou Yuexing regarding Request for Rescinding an Administrative Review dated March 29, 2011.

⁷ See Memorandum to James Doyle, Director, Office 9, from Bob Palmer, Case Analyst, Office 9, “Antidumping

Questionnaires

On May 9, 2011, the Department issued its initial non-market economy (“NME”) antidumping duty questionnaire to Hilltop and Regal, and issued supplemental questionnaires to Hilltop and Regal between July 2011 and January 2012. Hilltop and Regal responded to the Department’s initial and subsequent supplemental questionnaires between August 2011 and January 2012.

Surrogate Country and Surrogate Values

On June 21, 2011, the Department sent interested parties a letter requesting comments on the surrogate country and information pertaining to the valuation of factors of production (“FOPs”).⁸ On August 4, 2011, Petitioners submitted comments on the selection of a surrogate country, stating that Thailand was the appropriate surrogate country for this review.⁹ On September 2, 2011, Hilltop submitted comments on the selection of a surrogate country, arguing that India, while not on the surrogate country list, is the appropriate surrogate country for this review.¹⁰ On September 7, 2011, Domestic Processors submitted rebuttal comments to Hilltop’s submission, stating that India is no longer the most appropriate surrogate country for this proceeding.¹¹ On September 23, 2011, the Department received comments from Petitioners regarding the valuation of FOPs.¹² On September 26, 2011, the Department received comments

Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Selection of Respondents for Individual Review,” dated May 9, 2011.

⁸ See Letter from Catherine Bertrand, Program Manager, Office 9, to All Interested Parties dated June 21, 2011.

⁹ See Letter from Petitioners regarding Comments on Surrogate Country Selection for the Sixth Administrative Review (2010-2011) dated August 4, 2011 (“Petitioners SC Comments”).

¹⁰ See Letter from Hilltop regarding Surrogate Country Comment dated September 2, 2011 (“Hilltop SC Comments”).

¹¹ See Letter from Domestic Processors regarding Surrogate Country Comments dated September 7, 2011 (“Domestic Processors SC Comments”).

¹² See Letter from Petitioners regarding Data on Surrogate Values for the Sixth Administrative Review (2010-2011) dated September 23, 2011 (“Petitioners’ SV Submission”).

from Hilltop regarding the valuation of FOPs.¹³ On October 12, 2011, the Department received rebuttal comments from Hilltop regarding the valuation of FOPs.¹⁴ For a detailed discussion of the selection of the surrogate country, see “Surrogate Country” section below.

Case Schedule

On August 16, 2011, in accordance with section 751(a)(3)(A) of the Act, we extended the time period for issuing the preliminary results by 120 days, until February 28, 2012. See Certain Frozen Warmwater Shrimp From the People’s Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review, 76 FR 50718 (August 16, 2011).¹⁵

Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,¹⁶ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States (“HTS”), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp

¹³ See Letter from Hilltop regarding Hilltop Group’s First Surrogate Value Submission dated September 26, 2011 (“Hilltop SV Submission”).

¹⁴ See Letter from Hilltop regarding First Surrogate Value Rebuttal dated October 12, 2011 (“Hilltop SV Rebuttal”).

¹⁵ On February 10, 2012, Domestic Processors submitted comments alleging discrepancies between the CBP data released by the Department for purposes of respondent selection and the sales quantities reported by Regal. See Domestic Processors’ Comments on Subject Merchandise Covered in the Sixth Administrative Review dated February 10, 2012. However due to its submission in close proximity to the preliminary results deadline, the Department is not addressing those comments at this time. However, Domestic Processors’ comments will be closely reviewed and appropriately addressed for the final results of this review.

¹⁶ “Tails” in this context means the tail fan, which includes the telson and the uropods.

and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee’s shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); (8) certain dusted shrimp;¹⁷ and (9) certain battered shrimp. Dusted

¹⁷ On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (“CIT”) decision in Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (“ITC”) determination, which found the domestic like product to include dusted shrimp. Because the amendment of the antidumping duty order occurred after this POR, dusted shrimp continue to be excluded in this review. See Certain Frozen Warmwater Shrimp from

shrimp is a shrimp-based product: (1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the order are currently classified under the following HTS subheadings: 0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040, 0306.17.0003, 0306.17.0006, 0306.17.0009, 0306.17.0012, 0306.17.0015, 0306.17.0018, 0306.17.0021, 0306.17.0024, 0306.17.0027, 0306.17.0040, 1605.20.1010, 1605.20.1030, 1605.21.1030, and 1605.29.1010. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of the order is dispositive.

Intent to Revoke, In Part

As noted above, in its request for review, Hilltop submitted a request for company-specific revocation pursuant to 19 CFR 351.222(e). Pursuant to section 751(d) of the Act, the Department “may revoke, in whole or in part” an antidumping duty order upon completion of a

Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision, 76 FR 23277 (April 26, 2011); see also Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011. However, we note that this review only covers suspended entries that did not include dusted shrimp, but cash deposits going forward will apply to dusted shrimp.

review under section 751(a) of the Act. In determining whether to revoke an antidumping duty order in part, the Department considers: (1) Whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether during each of the three consecutive years for which the company sold the merchandise at not less than normal value, it sold the merchandise to the United States in commercial quantities; and (3) the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to revocation, sold the subject merchandise at less than NV. See 19 CFR 351.222(e)(1).

Hilltop's request for revocation was accompanied by certifications, pursuant to 19 CFR 351.222(e)(1), stating that Hilltop and its U.S. affiliates have sold subject merchandise at not less than NV for at least three consecutive review periods and that they will not sell the merchandise at less than NV in the future, and that Hilltop and its U.S. affiliates sold subject merchandise to the United States in commercial quantities for at least three consecutive review periods.¹⁸ Hilltop and its U.S. affiliates also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to its revocation, they sold the subject merchandise at less than NV.¹⁹

We have preliminarily determined that the request from Hilltop meets all of the criteria under 19 CFR 351.222(e)(1). Our preliminary margin calculation confirms that Hilltop and its U.S. affiliates sold subject merchandise at not less than NV during the current review period. See the "Preliminary Results of the Review" section below. In addition, we have confirmed

¹⁸ See Revocation Request and Hilltop's Third Supplemental questionnaire response dated December 7, 2011 ("Hilltop Third Supplemental Questionnaire"), at Exhibit 4.

¹⁹ See id.

that Hilltop and its U.S. affiliates sold subject merchandise at not less than NV in the two previous administrative reviews in which Hilltop was individually examined (i.e., its dumping margins were zero or de minimis).²⁰

Based on our examination of the sales data submitted by Hilltop and its U.S. affiliates, we preliminarily determine that they sold subject merchandise in the United States in commercial quantities in each of the consecutive review periods cited by Hilltop and its U.S. affiliates to support their request for revocation.²¹ Thus, we preliminarily find that Hilltop had a zero or de minimis dumping margin for each of the last three years and sold subject merchandise in commercial quantities during each of these years. Also, we preliminarily determine, pursuant to section 751(d) of the Act and 19 CFR 351.222(b)(2), that the application of the antidumping duty order with respect to Hilltop is no longer warranted for the following reasons: (1) The company had a zero or de minimis margin for a period of at least three consecutive years; (2) the company has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than NV; and, (3) the continued application of the order is not otherwise necessary to offset dumping. Therefore, we preliminarily determine that subject merchandise produced and/or exported by Hilltop qualifies for revocation from the antidumping duty order on certain frozen warmwater shrimp from the PRC. If these preliminary findings are affirmed in our final results, we will revoke this order, in part, with respect to certain frozen warmwater shrimp produced and/or exported by Hilltop and, in accordance with 19 CFR 351.222(f)(3), terminate the suspension of liquidation for any of the merchandise in question that is entered, or withdrawn from warehouse, for consumption on or after February 1, 2011, and instruct CBP to

²⁰ See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460 (August 13, 2010), and Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940 (August 19, 2011).

²¹ See Hilltop Third Supplemental Questionnaire, at Exhibit 3.

release any cash deposits for such entries.

Affiliation/Single Entity

In the fifth administrative review of this proceeding, we found Hilltop affiliated with Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., Yelin Enterprise Co., Ltd., Ocean Beauty Corporation, Ever Hope International Co., Ltd., and Ocean Duke Corporation. Further, we found Hilltop, Yelin Enterprise Co., Ltd., Ocean Beauty Corporation, and Ever Hope International Co., Ltd. to be a single entity.²² Hilltop has not submitted any information in this review that would warrant any change to our finding in the fifth administrative review. However, in this administrative review, Hilltop stated in its questionnaire responses that the only affiliation change since the previous review was the establishment of a new U.S. affiliate, Kingston Foods Corporation (“Kingston”).²³ Hilltop described Kingston’s ownership and submitted an affiliation chart showing Kingston’s relationship to Hilltop and its other affiliates.²⁴ Accordingly, we preliminarily determine that Kingston is an affiliate of Hilltop pursuant to sections 771(33)(A) and (F) of the Act, based on common ownership and control by a family grouping.

Preliminary Partial Rescission of Review

As discussed in the Background section above, Shantou Yuexing Enterprise Company filed a no shipment certification indicating that it did not export subject merchandise to the United States during the POR. The Department’s practice concerning “no-shipment” respondents has been to rescind the administrative review if the respondent certifies that it had

²² See Certain Frozen Warmwater Shrimp From the People’s Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review, 76 FR 8338 (February 14, 2011) (“PRC Shrimp AR5 Prelim”); unchanged in Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940, 51941-42 (August 19, 2011) (“PRC Shrimp AR5 Final”).

²³ See Hilltop’s Section C questionnaire response dated July 14, 2011 (“Hilltop SCQR”), at 1; see also Hilltop’s Supplemental Section A questionnaire response dated August 14, 2011 (“Hilltop Supp A”), at 6.

²⁴ See Hilltop’s Supp A at 1 and Hilltop’s Supplemental ACD questionnaire response dated September 14, 2011 (“Hilltop SuppACD”), at Exhibit SS-2.

no shipments and the Department has confirmed through its examination of data from CBP that there were no shipments of subject merchandise during the POR.²⁵

On May 19, 2011, the Department sent an inquiry to CBP to determine whether CBP entry data is consistent with Shantou Yuexing Enterprise Company's no shipments certification and received no information contrary to that statement. As CBP only responds to the Department's inquiry when there are records of shipments from the company in question²⁶ and no party submitted comments, we preliminarily determine that Shantou Yuexing Enterprise Company had no shipments during the POR. Therefore, we are preliminarily rescinding the review with respect to Shantou Yuexing Enterprise Company.²⁷

NME Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.²⁸ Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

A designation of a country as an NME remains in effect until it is revoked by the

²⁵ See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27393 (May 19, 1997).

²⁶ See Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Flat Products From Brazil: Notice of Rescission of Antidumping Duty Administrative Review, 75 FR 65453, 65454 (October 25, 2010); Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Notice of Intent to Rescind Administrative Review, 74 FR 3559, 3560 (January 21, 2009); and Certain In-Shell Raw Pistachios from Iran: Rescission of Antidumping Duty Administrative Review, 73 FR 9292, 9293 (February 20, 2008).

²⁷ See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 72 FR 53527, 53530 (September 19, 2007), unchanged in Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission, 73 FR 15479, 15480 (March 24, 2008).

²⁸ See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review, 71 FR 66304 (November 14, 2006).

Department.²⁹ Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.³⁰

In the Initiation, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings. See Initiation.³¹ It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991), as amplified by Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a further separate rate analysis is not necessary to determine whether it is independent from government control.³²

In this administrative review, the Department received completed responses to the Section A portion of the NME antidumping questionnaire from Hilltop and Regal, which

²⁹ See section 771(18)(C) of the Act.

³⁰ See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006); Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China, 71 FR 29303 (May 22, 2006).

³¹ In the Initiation, the Department inadvertently stated that Separate Rate Certifications are due no later than 30 days after publication of the initiation notice, rather than the standard deadline of 60 days. This was corrected in Initiation of Antidumping and Countervailing Duty Administrative Reviews; Correction, 76 FR 24855 (May 3, 2011).

³² See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007).

contained information pertaining to the companies' eligibility for a separate rate.³³ All other companies upon which the Department initiated an administrative review that have not been rescinded did not submit either a separate rate application or certification. Therefore, we have determined it appropriate to find that these companies did not demonstrate their eligibility for separate rate status and are properly considered part of the PRC-wide entity.

Separate Rate Recipients

Wholly Foreign-Owned

Hilltop has reported that it is a Hong Kong based exporter of subject merchandise.³⁴ Regal has reported that it is a wholly foreign-owned enterprise.³⁵ Therefore, there is no PRC ownership of Hilltop or Regal, and because the Department has no evidence indicating that either of these companies are under the control of the PRC, further separate rate analysis is not necessary to determine whether they are independent from government control.³⁶ Consequently, we preliminarily determine that Hilltop and Regal have met the criteria for a separate rate.

In the Initiation, we instructed all companies requesting separate rate status in this administrative review to submit, as appropriate, either a separate rate status application or certification. As discussed above, the Department initiated this administrative review with respect to 84 companies and is preliminarily rescinding this review with respect to Shantou Yuexing Enterprise Company. Thus, including Hilltop and Regal, 83 companies remain subject to this review. While Hilltop and Regal provided documentation supporting their eligibility for a

³³ See Hilltop's Section A questionnaire response dated June 15, 2011 ("Hilltop SAQR"), at 3-4, and Regal's Section A questionnaire response dated June 10, 2011 ("Regal SAQR"), at 2.

³⁴ See Hilltop SAQR at 1.

³⁵ See Regal SAQR at 2.

³⁶ See Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review, 66 FR 1303, 1306 (January 8, 2001), unchanged in Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review, 66 FR 27063 (May 16, 2001); Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China, 64 FR 71104 (December 20, 1999).

separate rate, the remaining companies under active review have not demonstrated their eligibility for a separate rate. Therefore, the Department preliminarily determines that there were exports of merchandise under review from 81 PRC exporters that did not demonstrate their eligibility for separate rate status.³⁷ As a result, the Department is treating these 81 PRC exporters as part of the PRC-wide entity, subject to the PRC-wide rate.

PRC-Wide Entity

We have preliminarily determined that 81 companies did not demonstrate their eligibility for a separate rate and are properly considered part of the PRC-wide entity. As explained above in the Separate Rates section, all companies within the PRC are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are thus assigned a single antidumping duty

³⁷ Those companies are: Allied Pacific Aquatic Products Zhanjiang Co Ltd., Allied Pacific Food (Dalian) Co., Ltd., Asian Seafoods (Zhanjiang) Co., Ltd., Beihai Evergreen Aquatic Product Science And Technology Co Ltd., Beihai Qinguo Frozen Foods Co., Ltd., Capital Prospect, Dalian Hualian Foods Co., Ltd., Dalian Shanhai Seafood Co., Ltd., Dalian Z&H Seafood Co., Ltd., Ever Hope International Co., Ltd., Everflow Ind. Supply, Flags Wins Trading Co., Ltd., Fuchang Aquatic Products Freezing, Fujian Chaohui International Trading, Fuqing Minhua Trade Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., Fuqing Yiyuan Trading Co., Ltd., Gallant Ocean (Nanhai), Ltd., Guangdong Jiahuang Foods, Guangdong Jinhang Foods Co., Ltd., Guangdong Wanya Foods Fty. Co., Ltd., Hai Li Aquatic Co., Ltd., Hainan Brich Aquatic Products Co., Ltd., Hainan Golden Spring Foods Co., Ltd., Hainan Hailisheng Food Co., Ltd., Hainan Seaberry Seafoods Corporation, Hainan Xiangtai Fishery Co., Ltd., Haizhou Aquatic Products Co., Ltd., Hua Yang (Dalian) International, Jet Power International Ltd., Jin Cheng Food Co., Ltd., Leizhou Yunyuan Aquatic Products Co., Ltd., Maple Leaf Foods International, North Seafood Group Co., Panasonic Mfg. Xiamen Co Phoenix Intl., Rizhao Smart Foods, Rui'an Huasheng Aquatic Products Processing Factory, Savvy Seafood Inc., Sea Trade International Inc., Shanghai Linghai Fisheries Trading Co. Ltd., Shanghai Smiling Food Co., Ltd., Shanghai Zhoulian Foods Co., Ltd., Shantou Jiazhou Foods Industry, Shantou Jin Cheng Food Co., Ltd., Shantou Longfeng Foodstuff Co., Ltd., Shantou Longsheng Aquatic Product Foodstuff Co., Ltd., Shantou Ruiyuan Industry Company Ltd., Shantou Wanya Foods Fty. Co., Ltd., Shantou Xinwanya Aquatic Product Ltd Company, Shantou Yue Xiang Commercial Trading Co., Ltd., Shengsi Huali Aquatic Co., Ltd., SLK Hardware, Thai Royal Frozen Food Zhanjiang Co., Ltd., Tongwei Hainan Aquatic Products Co. Ltd., Top One Intl., Xiamen Granda Import & Export Co., Ltd., Xinjiang Top Agricultural Products Co., Ltd., Xinxing Aquatic Products Processing Factory, Yancheng Hi-king Agriculture Developing Co., Ltd., Yangjiang Wanshida Seafood Co., Ltd., Yelin Enterprise Co., Ltd., Zhangzhou Xinwanya Aquatic Product, Zhanjiang East Sea Kelon Aquatic Products Co. Ltd., Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd., Zhanjiang Fuchang Aquatic Products Co., Ltd., Zhanjiang Go Harvest Aquatic Products Co., Ltd., Zhanjiang Haizhou Aquatic Product Co. Ltd., Zhanjiang Jinguo Marine Foods Co., Ltd., Zhanjiang Longwei Aquatic Products Industry Co., Ltd., Zhanjiang Universal Seafood Corp., Zhejiang Daishan Baofa Aquatic Products Co., Ltd., Zhejiang Industrial Group Co., Ltd., Zhejiang Shaoxing Green Vegetable Instant Freezing Co., Ltd., Zhejiang Zhoufu Food Co., Ltd., Zhongshan Foodstuffs & Aquatic Imp. & Exp. Group Co. Ltd. of Guangdong, Zhoushan City Shengtai Aquatic Co., Zhoushan Junwei Aquatic Product Co. Ltd., Zhoushan Lianghong Aquatic Foods Co. Ltd., Zhoushan Mingyu Aquatic Product Co. Ltd., and Zhoushan Putuo Huafa Sea Products Co., Ltd.

rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that have provided sufficient evidence to establish that they operate freely with respect to their export activities.³⁸ Therefore, we are assigning as the entity's current rate 112.81 percent, the only rate ever determined for the PRC-wide entity in this proceeding.

Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are at a level of economic development comparable to that of the NME country and significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the Normal Value section below and in the Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Kabir Archuletta, Case Analyst, Office 9, "Sixth Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Surrogate Factor Valuations for the Preliminary Results," dated concurrently with this notice ("Surrogate Value Memo").

As discussed in the NME Country Status section, above, the Department considers the PRC to be an NME country. The Department determined that Colombia, Indonesia, the

³⁸ See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079, 53080 (September 8, 2006).

Philippines, South Africa, Thailand, and Ukraine are countries comparable to the PRC in terms of economic development. See the Department’s letter to All Interested Parties, dated June 21, 2011 (“Surrogate Country List”). Moreover, it is the Department’s practice to select an appropriate surrogate country based on the availability and reliability of data from these countries. See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process, dated March 1, 2004 (“Policy Bulletin”).³⁹

Petitioners submit that of the countries listed on the Department’s Surrogate Country List, Thailand is the closest to the PRC in its level of economic development, and therefore, the most suitable surrogate country in this review.⁴⁰ Petitioners further argue that Thailand is a producer of comparable merchandise and has publicly available pricing data and financial statements.⁴¹

Hilltop argues that the Department should select India as the primary surrogate country, as it has in every segment since the investigation, because: 1) the World Bank classifies both India and China as lower-middle-income countries; 2) India is a significant producer of comparable merchandise; and 3) Indian pricing information continues to be the most highly vetted, reliable and best corroborated publicly available data.⁴² However, Hilltop states that should the Department select a surrogate country from its Surrogate Country List, there is data from Thailand that could serve for purposes of valuing FOPs in conjunction with Indian data.⁴³

In rebuttal, Domestic Processors argue that the fact that India was selected as the primary surrogate country in prior segments does not support ignoring changes in the economic

³⁹ Available at <http://ia.ita.doc.gov/policy/bull04-1.html>

⁴⁰ See Petitioners SC Comments, at 3 and 5.

⁴¹ See id., at 4-6.

⁴² See Hilltop SC Comments, at 1-4.

⁴³ See id., at 4-5.

comparability of India and the PRC.⁴⁴ Domestic Processors state that while both India and the PRC are classified by the World Bank as lower-middle-income countries, the Department cannot ignore specific income data in favor of less meaningful country classifications to determine economic comparability.⁴⁵ Domestic Processors argue that Thailand, the Philippines and Indonesia are economically comparable to the PRC and significant producers of subject merchandise, whereas India is not economically comparable to the PRC.⁴⁶

Economic Comparability

As explained in our Surrogate Country List, the Department considers Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine as all comparable to the PRC in terms of economic development.⁴⁷ Therefore, we consider all six countries on the Surrogate Country List as having met this prong of the surrogate country selection criteria. Furthermore, we note that in Steel Wheels,⁴⁸ the Department stated that “unless we find that all of the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, we will rely on data from one of these countries.” Because the Department finds that one of these countries from the Surrogate Country List meets the selection criteria, as explained below, the Department is not considering India as the primary surrogate country.

Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate

⁴⁴ See Domestic Processors SC Comments, at 2-3.

⁴⁵ See *id.*, at 3-4.

⁴⁶ See *id.*, at 4-5.

⁴⁷ See Surrogate Country List.

⁴⁸ See Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 76 FR 67703, 67708 (November 2, 2011) (“Steel Wheels”).

country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the Policy Bulletin for guidance on defining comparable merchandise. The Policy Bulletin states that "the terms 'comparable level of economic development,' 'comparable merchandise,' and 'significant producer' are not defined in the statute."⁴⁹ The Policy Bulletin further states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."⁵⁰ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.⁵¹ Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.⁵² "In cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does this depends on the subject merchandise."⁵³ In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, i.e., inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, e.g., processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.⁵⁴

Further, the statute grants the Department discretion to examine various data sources for

⁴⁹ See Policy Bulletin.

⁵⁰ See id.

⁵¹ The Policy Bulletin also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." See id., at note 6.

⁵² See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 65674 (December 15, 1997) and accompanying Issues and Decision Memorandum at Comment 1 (to impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute).

⁵³ See Policy Bulletin, at 2.

⁵⁴ See id., at 3.

determining the best available information.⁵⁵ Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”⁵⁶ it does not preclude reliance on additional or alternative metrics. In this case, we examined both production data published by the United Nations Food and Agriculture Organization, Fisheries and Aquaculture Information and Statistics Service (“UNFAO”), and export data published by the Global Trade Atlas (“GTA”) to determine which countries included on the Surrogate Country List were producers of identical and comparable merchandise. Production data for 2009, the most recently available year, indicates that all countries on the Surrogate Country List had production of identical merchandise, with the exception of Ukraine. We note that the “Natantian Decapods, nei” produced in Ukraine, and referenced in the production data, is a general class of shrimp that includes both subject and non-subject merchandise, and, therefore, should properly be classified comparable merchandise. However, Thailand and Indonesia, the largest and second largest producing countries, respectively, individually produced substantially more identical merchandise than all other countries combined. Further, we note that Thailand and Indonesia had substantial production of the same species of shrimp produced by both respondents in the instant review. Similarly, GTA export data indicates that all of the countries listed on the Surrogate Country List had exports of the primary HTS numbers included in the scope of the Order during the POR, *i.e.*, of HTS numbers 0306.13 and 1605.20. However, Thailand and Indonesia had the largest and second largest export volumes, respectively, of the aforementioned HTS numbers.

As noted above, all countries on the Surrogate Country List had production of identical or comparable merchandise and were exporters of HTS numbers included in the scope of the Order.

⁵⁵ See section 773(c) of the Act; *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

⁵⁶ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

Since none of the potential surrogate countries have been definitively disqualified through the above analysis, the Department looks to the availability of SV data to determine the most appropriate surrogate country.

Data Availability

When evaluating SV data, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, from an approved surrogate country, tax- and duty-exclusive, and specific to the input. There is no hierarchy among these criteria. It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.⁵⁷ In this case, Petitioners and Hilltop placed SV data on the record of this review for Thailand, including prices for shrimp larvae and shrimp feed, and the financial statements of three Thai processors of subject merchandise.⁵⁸ We note that because both respondents in this review have reported that they farm their own shrimp,⁵⁹ shrimp larvae and shrimp feed are the primary inputs of their production and, thus, the SVs most essential to our analysis.

In addition to the SV data placed on the record by interested parties, we conducted an extensive search for SVs from other countries included on the Surrogate Country List. We were able to locate additional pricing data for shrimp larvae and shrimp feed from Thailand, as well as from the Philippines and Indonesia. We note that only Thailand, the Philippines and Indonesia have specific HTS numbers for shrimp feed. Further, the Thai shrimp larvae values and financial statements on the record of this review and those located by the Department were of superior quality to those that we were able to locate from the Philippines and Indonesia. Specifically, the shrimp larvae values located by the Department from Indonesia and the Philippines were non-

⁵⁷ See Policy Bulletin.

⁵⁸ See Petitioners' SV Submission; Hilltop SV Submission; and Hilltop SV Rebuttal.

⁵⁹ See Regal's supplemental questionnaire dated September 6, 2011, at S-5 and Hilltop's Section D questionnaire response dated July 14, 2011, at 5.

contemporaneous and the financial statements were either non-contemporaneous or the company had net losses during the POR. Further, a search for financial statements, shrimp larvae values and shrimp feed values from other countries on the surrogate country list did not produce any usable SVs. While we recognize potential issues with the three financial statements on the record from Thailand, we find the SV data from Thailand, as a whole, to be more robust than the available data from the Philippines and Indonesia. See Surrogate Value Memo.

Therefore, the Department finds Thailand to be a reliable source for surrogate values because Thailand is at a comparable level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of identical and comparable merchandise, and has publicly available and reliable data. Given the above facts, the Department has selected Thailand as the primary surrogate country for this review. See Surrogate Value Memo.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, we calculated the export price (“EP”) for sales to the United States for Regal, because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight, foreign brokerage and handling, customs duties, domestic brokerage and handling and other movement expenses incurred. For the services provided by an NME vendor or paid for using an NME currency, we based the deduction of these movement charges on surrogate values. See Surrogate Value Memo for details regarding the surrogate values for movement expenses. The Department has not used Regal’s reported market economy international freight expenses because Regal was unable to provide evidence of the purchase

price between the freight forwarder located in the PRC and the market economy carrier. It is the Department's practice to require a respondent to establish a link between payments to the ME carrier through the ME ocean freight carrier's PRC agent.⁶⁰ Accordingly, we have applied a SV to all of Regal's ocean freight costs, which we deducted in the calculation of U.S. net price. For further details, see the company specific analysis memorandum, dated concurrently with the signature date of this notice.

Constructed Export Price

For Hilltop's sales, we based U.S. price on constructed export price ("CEP") in accordance with section 772(b) of the Act, because sales were made on behalf of Hilltop by its U.S. affiliates to unaffiliated purchasers in the United States. For these sales, we based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling expenses, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States. We deducted, where appropriate, commissions, inventory carrying costs, credit expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by PRC service providers or paid for in Chinese renminbi, we valued these services using surrogate values. See Surrogate Value Memo for details regarding the surrogate values for movement expenses. For those expenses that were provided by a market-economy provider and paid for in market-economy currency, we used the reported

⁶⁰ See Wire Decking From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 32905 (June 10, 2010) and accompanying Issues and Decision Memorandum at Comment 6.

expenses. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for Hilltop and Regal, see the company specific analysis memoranda, dated concurrently with the signature date of this notice.

Normal Value

Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by the respondents for the POR. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below).

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to each Thai import surrogate value a surrogate freight cost calculated from the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. See Sigma Corp. v. United States, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997). Where we could not obtain publicly available information contemporaneous to the POR with which to value FOPs, we adjusted the surrogate values, where appropriate, using the Producer Price Index ("PPI") as published in the

International Monetary Fund's International Financial Statistics. See Surrogate Value Memo.

The Department used Thai import statistics from GTA to value the raw material and packing material inputs that Hilltop and Regal used to produce subject merchandise during the POR, except where listed below.

Petitioners provided a SV for shrimp larvae derived from a price list for various sizes of black tiger prawn larvae published in April of 2006 by the Thailand Department of Fisheries' National Institute of Coastal Aquaculture.⁶¹ Hilltop provide a SV for white shrimp larvae derived from an April 2008 study by the Thai Ministry of Natural Resource and Environment, Pollution Control Department, titled "Aquaculture under the low-salted system in fresh water area."⁶² In its rebuttal submission, Hilltop objected to the use of Petitioners' SV for shrimp larvae based on evidence indicating higher production costs and larvae prices for black tiger prawns as opposed to white shrimp, the sole species produced by Hilltop.⁶³ To value shrimp larvae, the Department is placing on the record of this review the March 2010 publication of Aqua Culture Asia Pacific magazine. We find this to be the best source on the record because it is publicly available, contemporaneous with the POR and specific to the input, which in this case is white shrimp larvae, the sole species produced by Hilltop.⁶⁴ Because Regal operates its own hatchery, we are not using a surrogate to value Regal's self-produced shrimp larvae.⁶⁵ Rather, we are valuing Regal's inputs at the hatchery stage. For further discussion of this issue, see Surrogate Value Memo.

Petitioners placed GTA-Thailand import data on the record of this review for the

⁶¹ See Petitioners' SV Submission at Exhibit 1.

⁶² See Hilltop SV Submission at Exhibit 16.

⁶³ See Hilltop SuppACD at 37, and Hilltop Rebuttal Submission at 2 and Exhibits 1A and 1B.

⁶⁴ See id.

⁶⁵ See Regal's supplemental questionnaire dated September 6, 2011, at S-14.

purposes of valuing shrimp feed.⁶⁶ Hilltop provided a SV for shrimp feed derived from a 2008 study titled “Analysis of Production Costs and Logistic Costs of White Shrimp Farming in Thailand.”⁶⁷ In its rebuttal submission, Hilltop objected to the use of Petitioner’s source for shrimp feed, arguing that the high average unit values (“AUVs”) reflected in the import data would produce an unreasonable result.⁶⁸

In testing the reliability of SVs alleged to be aberrational, or in this case, SVs which produce an unreasonable result, the Department applies certain criteria in making its decision. First, the Department's current practice is to compare the surrogate values in question to the GTA AUVs calculated for the same period using data from the other potential surrogate countries on the Surrogate Country List, to the extent that such data are available.⁶⁹ In a similar vein, we note that the Department has also examined data from the same HTS category for the surrogate country over multiple years to determine if the current data appear aberrational with respect to historical values.⁷⁰

The Department has analyzed POR and historical shrimp feed import data for Thailand, the Philippines, and Indonesia, for the periods corresponding to the 4th, 5th and 6th administrative reviews of this case. See Surrogate Value Memo. We note that for the current POR, the AUV of Thai shrimp feed imports was \$14.54/kg, while the AUVs of the Indonesian and Philippine shrimp feed imports were \$0.92/kg and \$0.50/kg, respectively. See id. Further, the AUV of

⁶⁶ See Petitioners’ SV Submission at Exhibits 1 and 12-15.

⁶⁷ See Hilltop SV Submission at Exhibit 1 and Exhibit 4.

⁶⁸ See Hilltop SV Rebuttal Submission at 2 and Exhibit 2.

⁶⁹ See, e.g., Carbazole Violet Pigment 23 from the People’s Republic of China: Final Results of Antidumping Administrative Review, 75 FR 36630 (June 28, 2010) and accompanying Issues and Decision Memorandum at Comment 4, and Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 5.

⁷⁰ See, e.g., Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008) and accompanying Issues and Decision Memorandum at Comment 10; and Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 7515 (February 13, 2006) and accompanying Issues and Decision Memorandum at Comment 5.

Thai shrimp feed imports over the periods examined show considerably more variance, exhibiting a standard deviation of 11.43, than the other countries, with standard deviations ranging from 0.188 to 0.195. See id. While the Department is unable to determine the root cause of this variance, we do find that it may indicate aberrational data. Therefore, as the Thai import data for shrimp feed appears to be aberrational, based on a comparison against imports made during the POR by economically comparable countries and historical data, the Department has looked to other potential sources by which to value shrimp feed for these preliminary results.

With respect to Hilltop's SV source for shrimp feed, the only other source placed on the record of this review by interested parties, we note that it reports the cost of shrimp feed over the entire farming phase of shrimp production, i.e., the cost of shrimp feed required to produce one kg of finished product. However, Hilltop's source did not provide the quantity of shrimp feed used to produce one kg of finished product. Therefore, we are unable to calculate a per kg cost of shrimp feed based on this source, which is necessary to value respondents' consumption. . Therefore, we preliminarily determine not use Hilltop's source as it does not allow us to value the respondents' consumption.

It is the Department's preference to value all FOPs in a single surrogate country, when possible, consistent with section 351.408(c)(2) of the Department's regulations, which states that "the Secretary normally will value all factors in a single surrogate country." However, where no suitable SV is available from the primary surrogate country, the Department has valued FOPs in other countries that have been found to be significant producers of comparable merchandise and economically comparable to the NME country in question.⁷¹ As such, to value shrimp feed, the Department is placing shrimp feed import data for Indonesia, the second largest producer and

⁷¹ See Tapered Roller Bearings and accompanying Issues and Decision Memorandum at Comment 3; see also Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 3.

exporter of shrimp, on the record of this review because it does not appear to be aberrational, it is contemporaneous with the POR, it is a broad-market average, it is specific to the input and it is tax and duty exclusive. For further discussion of this issue, see Surrogate Value Memo.

We valued electricity using the 2010 prices published by the Electricity Generating Authority of Thailand, which contains pricing data for electricity sales to the Metropolitan Electricity Authority of Thailand, the Provincial Electricity Authority of Thailand, direct customers, minor customers and standby power supply rates. These electricity rates represent publicly available, broad-market averages. See Surrogate Value Memo.

On June 21, 2011, the Department announced its new methodology to value the cost of labor in NME countries.⁷² In Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (“ILO”) Yearbook of Labor Statistics (“Yearbook”).

As announced above, the Department's methodology is to use data reported under Chapter 6A by the ILO. For this review the Department found that Thailand last reported data in 2000 for Chapter 6A under Sub-Classification 15 of the ISIC-Revision 3, which we have adjusted for the POR using the relevant consumer price index as published by the International Monetary Fund’s International Financial Statistics under series “64..ZF Consumer Prices.” Accordingly, we are relying on Chapter 6A of the Yearbook, and have calculated the labor input using Sub-Classification 15 “Manufacture of Food Products and Beverages” labor data reported

⁷² See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (“Labor Methodologies”). This notice followed the Court of Appeals for the Federal Circuit in Dorbest Ltd. v. United States, 604 F.3d 1363, 1372 (CAFC 2010), found that the “[regression-based] method for calculating wage rates {as stipulated by 19 CFR 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Act (i.e., 19 U.S.C. 1677b(c))}.”

by Thailand to the ILO, in accordance with section 773(c)(4) of the Act. A more detailed description of the wage rate calculation methodology is provided in the Surrogate Value Memo.

As stated above, the Department used Thailand ILO data reported under Chapter 6A of the ILO Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, etc. Pursuant to Labor Methodologies, the Department's practice is to consider whether financial ratios reflect labor expenses that are included in other elements of the respondent's factors of production (e.g., general and administrative expenses). However, the financial statements used to calculate financial ratios in this review were insufficiently detailed to permit the Department to isolate whether any labor expenses were included in other components of NV. Therefore, in this review, the Department made no adjustment to these financial statements. See Surrogate Value Memo.

To value the respondents' international ocean freight from the PRC to the United States on NME carriers in instances where the exporter was responsible for these charges, the Department is using data obtained from the Descartes Carrier Rate Retrieval Database ("Descartes"), which can be accessed via <http://descartes.com/>. The Descartes rates are contemporaneous with the POR. See Surrogate Value Memo.

To value water, the Department used data published by the Metropolitan Waterworks Authority of Thailand (<http://www.mwa.co.th>) specific to prices charged to Commerce, Government Agency, State Enterprise and Industry. Although this source states that the published prices are effective as of December 1999 there is no information to indicate that these prices are not still in effect. See Surrogate Value Memo.

We valued diesel using data from the International Energy Agency publication Energy Prices & Taxes, Quarterly Statistics (Second Quarter 2011), which uses 2010 data that is tax and duty exclusive. See Surrogate Value Memo.

To value truck freight expenses, we used the World Bank's Doing Business 2011: Thailand located at <<http://www.doingbusiness.org/>>, which we find to be contemporaneous, specific to the cost of shipping goods in Thailand, and representative of a broad-market average. This report gathers information concerning the cost to transport a 20-foot container of dry goods weighing 10 tons from the largest city to the nearest seaport.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand published in the World Bank's Doing Business 2011: Thailand. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Thailand.

To value factory overhead, sales, general and administrative expenses ("S,G&A"), and profit, Petitioners placed on the record of this review the calendar year 2010 financial statements of Seafresh Industry Public Co., Ltd. ("Seafresh").⁷³ Hilltop placed on the record of this review the calendar year 2010 financial statements of Thai Union Frozen Products Public Co., Ltd. ("Thai Union"), and Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd. ("Kiang Huat").⁷⁴ The Department has reviewed the financial statements provided by the parties and determined that Thai Union⁷⁵ and Seafresh⁷⁶ received a countervailable subsidy during the POR, from a program previously investigated by the Department.⁷⁷

Section 773(c)(1) of the Act directs Commerce to base the valuation of the factors of production on "the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate..." Moreover, in valuing

⁷³ See Petitioners' SV Submission at Attachment 5.

⁷⁴ See Hilltop SV Submission at Exhibits 17A and 17B.

⁷⁵ See Hilltop SV Submission at Exhibit 17A, 49-50 (Board of Investment program and income tax exemption that is contingent upon export).

⁷⁶ See Petitioners' SV Submission at Attachment 5, 26-27 (Board of Investment program that is contingent upon export).

⁷⁷ See Final Negative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand, 70 FR 13462 (March 21, 2005); see also Ball Bearings and Parts Thereof From Thailand: Final Results of Countervailing Duty Administrative Review, 61 FR 728 (January 6, 1997).

such factors, Congress has directed Commerce to “avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices.”⁷⁸ Therefore, where the Department has a reason to believe or suspect that the company may have received subsidies, the Department may find that the financial ratios derived from that company's financial statements are less representative of the financial experience of that company or the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization.⁷⁹ Here, the Department finds that the statements for companies that received countervailable subsidies previously investigated by the Department do not constitute the best available information to value the surrogate financial ratios.⁸⁰ Therefore, we preliminarily determine that the Thai Union and Seafresh statements do not constitute the best available information on the record.

In determining the suitability of surrogate values, the Department carefully considers the available evidence with respect to the particular facts of each case and evaluates the suitability of each source on a case-by-case basis.⁸¹ Accordingly, when examining the merits of financial statements on the record, the Department does not have an established hierarchy that automatically gives certain characteristics more weight than others. Rather, the Department must weigh available information with respect to each situation and make a product and case-specific decision as to what constitutes the "best" available information. Furthermore, the CIT has

⁷⁸ See Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 590-91 (1988).

⁷⁹ See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

⁸⁰ See id.

⁸¹ See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1; see also Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2.

recognized the Department's discretion in selecting the best surrogate values on the record.⁸²

With respect to the remaining Kiang Huat statement, we recognize that the company, which only processes shrimp, does not perfectly match the production experience of respondents, which farm and process shrimp.⁸³ Although the Department's standard criteria for selecting financial statements in calculating surrogate financial ratios also includes examining the level of integration of the surrogate company in order to approximate the overhead costs, S,G&A, and profit levels of the respondent,⁸⁴ the CIT has held that the Department is "neither required to duplicate the exact production experience of the integrated manufacturers, nor undergo an item by item analysis in calculating factory overhead."⁸⁵ Moreover, it has been our experience that it is rarely possible to achieve exact symmetry between the NME producer and the surrogate producer.⁸⁶ Therefore, in this instance, we find that the Department's legislative obligation to avoid using values potentially distorted by subsidies outweighs the difference in levels of integration between the surrogate company and the respondents. Accordingly, for these preliminary results we have calculated the surrogate financial ratios based on the financial statement of Kiang Huat, which we find to be the best available information on the record because it does not contain evidence that the company received a countervailable subsidy during the POR from a program previously investigated by the Department.

Additionally, we note that the Kiang Huat financial statement does not identify energy

⁸² The CIT has upheld its previous determinations that "when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly." See FMC Corp. v. United States, 27 CIT 240, 241 (CIT 2003), (citing Technoimportexport, UCF America Inc. v. United States, 783 F. Supp. 1401, 1406 (CIT 1992)), affirmed FMC Corp. v. United States, 87 Fed. Appx. 753 (Fed. Cir. 2004).

⁸³ See Hilltop SV Submission at Exhibit 17B, 10 ("The principal business of the Company is frozen seafood manufacturing").

⁸⁴ See Drill Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, 76 FR 1966 (January 11, 2011), and accompanying Issues and Decision Memorandum at Comment 5.

⁸⁵ See Rhodia, Inc. v. United States, 240 F. Supp. 2d 1247 (CIT 2002).

⁸⁶ See Bulk Aspirin from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 48337 (August 13, 2003), and accompanying Issues and Decision Memorandum at Comment 2.

expenses. When the Department is unable to segregate and, therefore, exclude energy costs from the calculation of the surrogate financial ratio, it is the Department's practice to disregard the respondents' energy inputs in the calculation of normal value in order to avoid double-counting energy costs which have necessarily been captured in the surrogate financial ratios.⁸⁷ See Surrogate Value Memo.

Currency

Where appropriate, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in sections 782(i)(2)-(3) of the Act, we intend to verify the information upon which we will rely in determining our final results of review with respect to Hilltop.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period February 1, 2010, through January 31, 2011:

Exporter	Margin
Hilltop International ⁸⁸	0.00%
Zhanjiang Regal Integrated Marine Resources Co., Ltd.	0.00%
PRC-Wide Entity ⁸⁹	112.81%

⁸⁷ See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838, 16839 (April 13, 2009), and accompanying Issues and Decision Memorandum at Comment 2.

⁸⁸ This rate shall also apply to the single entity consisting of Hilltop International, Yelin Enterprise Co., Ltd., Ocean Beauty Corporation, and Ever Hope International Co., Ltd.

⁸⁹ The PRC-wide entity includes the 81 companies under review that are referenced above in footnote 33, as well as any company that does not have a separate rate.

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1).⁹⁰ Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of what information is already on the record of the ongoing proceeding which the factual information is rebutting, clarifying, or correcting.

Because, as noted above, the Department intends to verify the information upon which we will rely in making our final determination, the Department will establish the briefing schedule at a later time, and will notify parties of the schedule in accordance with 19 CFR 351.309. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to

⁹⁰ See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. See 19 CFR 351.309(c) and (d).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

Extension of the Time Limits for the Final Results

Section 751(a)(3)(A) of the Act requires that the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

In this proceeding, the Department requires additional time to complete the final results of this administrative review to conduct the verification of Hilltop, generate the reports of the verification findings, and properly consider the issues raised in case briefs from interested parties. Thus, it is not practicable to complete this administrative review within the original time limit. Consequently, the Department is extending the time limit for completion of the final results of this review by 60 days, in accordance with section 751(a)(3)(A) of the Act. The final results are now due no later 180 days after the publication date of these preliminary results.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. The Department intends

to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), for the mandatory respondent, we calculated an exporter/importer (or customer)-specific assessment rate for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). See 19 CFR 351.212(b)(1). Where an importer (or customer)-specific ad valorem rate is greater than de minimis, we will apply the assessment rate to the entered value of the importer's/customer's entries during the POR. See 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). See 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are de minimis, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific ad valorem ratios based on the estimated entered value. Where an importer (or customer)-specific ad valorem rate is zero or de minimis, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. See 19 CFR 351.106(c)(2).

For the company for which this review has been preliminarily rescinded, Shantou Yuexing Enterprise Company, the Department intends to assess antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2), if the review is rescinded for this company in the final results.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For Regal, the cash deposit rate will be that established in the final results of this review, except, if the rate is zero or de minimis, no cash deposit will be required; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 112.81 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

February 24, 2012
Date

[FR Doc. 2012-5028 Filed 03/01/2012 at 8:45 am; Publication Date: 03/02/2012]